# JOHORE REROART.

[APPELLATE CRIMINAL JURISDICTION]

COURT OF APPEAL.

SIR PERCY McELWAINE, C.J., S.S., POYSER, C.J., F.M.S., GORDON-SMITH, Ag. J.A., PEDLOW, J. and MANNING, J.

July 31, 1939.

ANCHOM BINTE LAMPONG - Appellant

v.

PUBLIC PROSECUTOR - - Respondent.

[MUAR CRIMINAL APPEAL No. 1 of 1939]

HUSSIN BIN MANDOT - - Appellant

v.

PUBLIC PROSECUTOR - - Respondent.

[MUAR CRIMINAL APPEAL No. 2 of 1939]

*Constitutional Law—Offences by Muhammedans Enactment—Whether ultra vires Constitution—Jurisdiction of Court to Interpret Constitution and pronounce on validity of Enactments of Legislature.*

The Courts of the State have no jurisdiction to interpret the written Constitution of the State or to construe the meaning or intent of any particular Article or part thereof. Nor is it competent for the Courts to say that an Enactment of the Legislature, duly passed by the Council of State and assented to by the Ruler, is **ultra vires** the Constitution. The Legislature is the sole authority which can decide whether what it does is **intra vires** or not.

**Per Poyser, C.J.** "....The Constitution of Johore is not a rigid constitution. It is in the nature of an Enactment which can at any time be amended or varied, and therefore has the force of law. In view of its terms I have no hesitation in coming to the conclusion that this Court has no power to pronounce on the validity or invalidity of any Enactment passed by the Council of State and assented to by the Sultan, any more than the English Courts could pronounce an Act of Parliament to be invalid. To hold otherwise would be to ignore the sovereignty of the Sultan and the legislature and to treat Enactments of the Johore Legislature as the English Courts treat by-laws...."

Cases referred to:—

(1) *Wong Ah Fook v. State of Johore,* 6 M.L.J. 128.

(2) *Pahang Consolidated Ltd. v. State of Pahang,* (1931-1932) F.M.S.L.R. pp. 131, 196 and 201.

(3) *Pahang Consolidated Ltd. v. State of Pahang,* (1931-1932) F.M.S.L.R. 390; 2 M.L.J. 247.

MAGISTRATE'S APPEALS (Consolidated).

The appellants had been convicted by the Magistrate at Muar on 30th May 1939 on charges under the Offences by Muhammedans Enactment (No. 47). They appealed to the Supreme Court on the ground that the convictions were wrong in law because the Council of State was precluded by the Constitution of Johore from revising or amending the Mohammedan Law which was declared by the Constitution to be an immutable part of the Law of the State, and as the Offences by Mohammedans Enactment purported to revise or amend the Mohammedan Law it was *ultra vires* and therefore void and of no effect, and consequently the Magistrate acted without jurisdiction in trying the case.

On 11th June 1939 the appeals came on for hearing before Mills J. who directed, in exercise of his power under Section 55 of the Courts Enactment, that in view of the importance of the questions raised the appeals should be heard and determined by the Court of Appeal.

Before the Court of Appeal

*Coltart* (assigned by the Court for both appellants)

Public Prosecutor *(Hon. L. V. J. Laville)* in person.

*Hon. Dato Roland Braddell* (retained by the State)

*G. M. Coltart.*—The point at issue is an academic one concerning the Constitutional Government of the State and resolves itself into the question whether or not the Offences by Muhammadans Enactment is void as being unconstitutional. The Court first has to consider whether any question of interpretation of the written Constitution of the State arises and if so, whether it is competent to interpret. If such question does arise and the Court holds that it cannot interpret, the proceedings should be adjourned until that interpretation is forthcoming and then pronounce judgment on the substantive issue.

Up to the year 1895 the Rulers of the State were absolute monarchs having full sovereignty over their peoples. In that year the father of the present Ruler adjured his autocracy and granted the written Constitution by virtue of which the State has since been ruled. The following portions of the Constitution are relevant: Sections XLIX, LIV, LV, LXIV and the first and last Supplements. Section XLIX deals with some aspects of the duties and powers of the Council of State and a possible ambiguity arises in the fourth line which may necessitate the Court remitting the matter to the Council of State for an

authoritative interpretation. The question is this: Does the Section empower the Council to aid the Sultan in his making laws or by the Council itself making laws?

The latter sense must be adopted. The Council is a law making body and the force of Enactments is derived from the Sultan's assent. (*Halsbury's* Laws of England, (*Hailsham* Edition) Vol XI p. 150 and *Braddell's* Legal Status of the Malay States p. 24). Section LIV goes so far as to use the words "which have been made" i.e. by the Council. How have enactments been made in the past? The earlier enactments running from 1910 to 1919 commenced "It is hereby enacted by His Highness the Sultan in Council", above which is written the name of the Ruler by way of assent. From Enactment No. 2 of 1919 up to the present day the commencement has been "It is hereby enacted by the Council of State with the approval of His Highness the Sultan, as follows": It seems that the Council itself makes the laws whether presided over by the Ruler or not. This is not how laws are made in the Federation. The usage since 1919 of the latter meaning to which reference has been made makes the position clear without any interpretation and this is supported by the Ruler's abrogation of power in Section LV.

It now falls to consider whether the Court has power to pronounce upon the Constitution. The following references are made in order to shew that the Court has power to do so:

*Wong Ah Fook v. The State of Johore*[1].

*Pahang Consolidated Ltd. v. The State of Pahang*[2].

Constitution of Johore Section LVIII and 2nd Supplement of 1908.

The Court can from the foregoing authorities pronounce whether an Enactment of the State is constitutional or un-constitutional. See also *Dicey's* Laws of the Constitution pp. 2, 86, 123, 126 and 516.

If the Court decides that no reference as to the Council of State is necessary on the question of interpretation, the following questions remain to be determined, viz. *a.* What is the Muhammadan Law relating to adultery and concomitant matters? *b.* Has such law been varied, amended or enlarged by the Offences by Muhammadans Enactment? As to the first question the Court can take one of three alternative courses. Either it can of its own knowledge say what the Mohammedan Law on the subject is; or it can refer the words for interpretation to the Council of State; lastly it can call for the advice of an expert under the provisions of the Muhammadan Law Determination Enactment by reference in writing to a Mufti. Any fresh evidence taken would be in order under Section 317 of the Criminal Procedure Code.

The case cannot proceed further than this. If fresh evidence is taken which is to the effect that the Enactment does vary or enlarge the Mohammadan Law, leave will be asked for further argument that an Enactment which is at variance with the written Constitution cannot be made *intra vires* by the sanction of the Sultan. This would be to violate the Constitution; see Statutes issued by the Sultan (1923) p. 13, Clause 3. The only proper course in that case would be by amendment of the Constitution.

*Braddell.*—Mohammedan Law is merely a part of the law of the State and Mohammedan Law was never administered in Malaya without local modifications see *Wilkinson* in Papers on Malay Subjects, Law, Pt: 1 p. 48; see too the Malacca Code in *Newbold's* British Settlements in the Straits of Malacca, vol: 2, pp. 231 ff. the Johore Code in the Journal of the Indian Archipelago, vol: 9, pp. 71, ff., the Ninety Nine Laws of Perak in Papers on Malay Subjects, Law, Pt: 2 pp. 1 ff. It does not therefore follow that because an Enactment is contrary to Mohammedan Law it violates the Law of Johore. The Mufti has answered questions put to him concerning this Enactment and I tender the questions and answers; they show that this Enactment does not in fact offend against Mohammadan Law. If the argument for the appellant were correct then what are we to say as to the punishment for adultery? Are people to be stoned to death in Johore? That is Mohammedan law and appellants say that there is no power to change Mohammedan law.

But the larger questions are much more important and they are these (a) has this Court any power to interpret the Constitution? (b) has it any power to declare an Enactment by His Highness and the Council of State to be invalid?

As to the first point Article 64 of the Constitution applies. In view of a possible doubt as to the construction of this Article the Constitution has been amended by a Supplement dated July 18, 1939, *Gazette* vol. 29 p. 772, which makes it perfectly clear that this Court has no power to interpret the Con-

stitution though, doubtless, it can apply it, see *Wong Ah Fook v. State of Johore*[1]. It seems clear that for the Court to accede to the appellants' argument it would have to interpret Article 49 of the Constitution since the whole argument is based upon the meaning of that Article.

As to the second point, His Highness the Sultan being a Malay Sovereign had all powers of government, executive, legislative and judicial, vested solely in him and to-day still has those powers save in so far as he has divested himself of any of them, *Pahang Consolidated v. State of Pahang*[3]. In Johore the Council of State is the supreme legislative body but its enactments have no force unless and until approved by His Highness the Sultan, see Articles 49, 54 and 55 of the Constitution. From whatever source the exact force of legislation in Johore may be derived, that is whether from His Highness the Sultan or from the Council of State or from both of them jointly, it results from an act by a legislature which, at all events within the territorial limits of the State, is sovereign. This Court has consequently no power to pronounce upon the validity of its acts any more than have the Courts in England to pronounce upon the validity of an Act of Parliament or the Courts in the Colony upon an Act of the Legislative Council, apart from the express power conferred in the Colonial Laws Validity Act. Although we have a Constitution in Johore it is very different from that of the United States which makes the Supreme Court an independent and co-equal department of the government and enables that Court by implication to pronounce upon the validity of laws passed by Congress.

*Cur. Adv. Vult.*

**McElwaine, C.J.**—The appellant in the first of these appeals was convicted of being found co-habiting with a man contrary to section 4 of Enactment 47 of 1937 and the appellant in the second appeal was the man who was convicted under section 6 of the Enactment.

The grounds of appeal which covered both cases were that the convictions were wrong in law for the following reasons:

(a) Mohammedan Law is one of the branches or ingredients of the Law of the State of Johore.

(b) Section XLIX of the Constitution of the State of Johore reads as follows:

> "The duties of the Council.....
> .....with foreign States."

(c) The Offences by Muhammedans Enactment purports to have been made by the Council of State with the approval of His Highness The Sultan and purports to revise, enlarge or amend the Mohamedan Law contrary to Section XLIX of the said Constitution.

(d) The Offences by Muhammadans Enactment is **Ultra Vires** the said constitution and is therefore void and of no effect.

(e) The Magistrate accordingly acted without jurisdiction in trying the case.

The importance of the points raised far transcends the importance of the two small cases, and indeed counsel assigned by the State to argue the appeals informed us that the appellants took little or no interest in the proceedings.

The case is an important one because we were informed that should Enactment No. 47 of 1937 be declared to be invalid, several other Enactments of the legislature of Johore would for the same reasons be invalid.

The offence of which these persons were convicted would, had it been witnessed in its entirety by four witnesses, have been the crime of Zinnah punishable under Mohammedan law by stoning to death.

The questions of law argued before us were first, can the Court interpret the constitution? secondly, if the first question is answered in the affirmative, can the Court declare an enactment of the legislature to be invalid if it infringes the constitution and thirdly, does Enactment 47 of 1937 infringe the constitution?

Dato Braddell for the State argued that the Court had no power to pronounce on the validity or invalidity of any Enactment of the State of Johore. This argument really followed from his second argument that the Court had no power to interpret the constitution in any way though the Court had power to apply the constitution. I am unable to see how the Court can apply the constitution without interpreting it and I think these two arguments may be reduced to this, that the Court must accept an Enactment as being valid until His Highness the Sultan by and with the aid and concurrence of the Council of State places an interpretation upon the constitution which shews that the Enactment infringes the constitution, and that it is only His Highness with the aid and concurrence of the Council of State who can declare an Enactment to be *ultra vires*.

The Sultan of Johore is an independent Sovereign prince save to such extent as he may by treaty, sufferance or usage have surrendered any of his sovereignty.

In the year 1895 the Sultan His Highness Abu Bakar, an absolute sovereign prince, executed the document which is known as the Constitution of Johore.

The preamble to the Constitution recites that it was made with the advice, concurrence and assent of all the Members of the Council of Ministers and of the Council of State and other Chiefs and Elders of the country. It proceeded to declare that it was proper and expedient that His Highness "should make, create, found and institute, and grant, give, bestow upon and present to and for the use of the Government, subjects and inhabitants of Our Country, a Law and Regulation for the administration and management of the State to be instituted the Laws of the Constitution of the State, which, enduring and continuing from generation to generation, shall become and form the law of Our State, Country, and people, and be an inheritance which cannot be altered, varied, changed, annulled, infringed or in any way or by any act whatsoever repealed or destroyed."

The enacting clause reads "We do make and enact the things stated hereunder as true, real, firm, fixed and settled Law of Our Country and State, that is to say, it shall be unlawful, unmanly, rebellious and criminal for any person to refuse to acknowledge and neglect to obey it".

There is no doubt the Constitution is part of the law of Johore. As Dato Braddell says at p. 23 of his informative Essay on the Legal Status of the Malay States—a work which I hope will long remain unauthorative—"it is binding on the Sultan and the State". I think this is correct, although, as Whitley J. pointed out in *Wong Ah Fook v. State of Johore*,[1] the unrestricted right of the Sultan in appointing and dismissing ministers enables many of the restrictions imposed upon his authority to be removed.

Having provided for a Counciil of State the Constitution proceeds to prescribe the duties of that Council.

> "XLIX. The duties of.....
> .....with foreign States."

Articles LIII and LIV provide for the assent of His Highness and the publication of enactments. The Legislature then consists of His Highness the Sultan and the Council of State and the assent of both these Authorities is necessary before an enactment is made law. This is emphasised by Article LV which provides that His Highness should assent, without assuming any moral responsibility therefor, to a measure passed a certain number of times by the Council of State.

It is clear therefore that the Constitution contemplates the making of new laws.

Article LXIV which provides for amendments of the Constitution is as follows:—

> "LXIV. At the end of.....
> .....called in question.
>
> So be it. Such are the Laws and Regulations of the Constitution of the State of Johore."

Before leaving the constitution of 1895 it is necessary in considering Dato Braddell's first two argument to set out Article LVIII of this Law:

> "LVIII. All the laws.....
> .....who are not."

As the Constitution is part of the law of Johore it is included in the laws which Courts of Justice are required to carry out. That at least would have been the position but for Article LXIV.

In 1908 his present Highness with the concurrence and assent of all the Members of the Council of State passed a Law intituled "a Supplement to the Constitution of the State". The words used in this and all similar enactments affecting the Constitution is "supplement" not "amendment". It is something which adds to the constitution, not something which detracts from it and I think the use of the word "Supplement" is occasioned by the words in Article LXIV "to add to and enlarge".

Article 1 of the Supplement of 1908 is as follows:

> "1. No person can.....
> .....all good Government."

and Article 2:

> "2. It is absolutely necessary.....
> .....of his Ministers."

This supplement by the present enlightened Sovereign Ruler of Johore embodies in the law of his State some of the most essential principles of liberty.

The Supplement of 1914 emphasises what I have already indicated is the view taken of the word "add to and enlarge" in Article LXIV.

The Constitution of 1895 provided for a Council of State who should all be subjects of His Highness. The Supplement of 1914 provided for additional Members of the Council of State who are not subjects of His Highness. Again, the Supplement of 1918 makes an addition to Article XXVI, but at the same time adds a proviso forbidding assignment of allowances and providing for forfeiture in case of conviction or bankruptcy.

Some of the Articles which I have quoted, are not in my view of the Constitution, strictly relevant to this judgment, but I set them out because it seems to me that the framers of this Constitution attempted to prescribe some principles which were to be binding on the Legislature which the Constitution created.

Sultan Abu Bakar was an absolute Monarch. He desired to establish a legislature which was to be to some extent limited in its powers.

He divested himself of some of his personal powers by transferring them to a Legislature of which he was a part and I should have endeavoured to hold that the Constitution was an over-riding enactment, as I think it was intended to be but I think it would be impossible so to hold it.

But the occasion for such an endeavour whether successful or unsuccessful cannot arise because of the latter part of Article LXIV, which in my opinion reduces the whole Constitution to nothing more than a pious council of perfection for the guidance of the Legislature in the future but which the Legislature is not bound to observe.

The Supplement of 1939 only clarifies an obscurity in Article LXIV and interprets it in the sense in which I would have been disposed to interpret it had I jurisdiction to interpret it and had the Supplement of 1939 never been enacted. Apart from the second half of Article LXIV and the Supplement of 1939, the Courts would have had jurisdiction to interpret the Constitution. Whitley J. interpreted it in *Wong Ah Fook's case*[1]. But it seems to me that there is no doubt Article LXIV and the Supplement of 1939 oust the jurisdiction of the Courts.

The Constitution itself and all the Supplements are made by His Highness with the advice and concurrence of the Council of State, in other words by the Legislature of the State of Johore and in my opinion it and the Supplements are Enactments of that Legislature and must be regarded in the same light as any other enactment.

While it is unusual, I see no reason to think that a sovereign legislature cannot say that a particular enactment shall be interpreted by a particular person or body of persons and that it shall not be interpreted by the Courts.

Article LXIV and the Supplement of 1939 appear to me incompatible with Article LVIII and with Article 2 of the Supplement of 1908, and, being a later and perfectly unambiguous enactment must be deemed to qualify the earlier enactments.

The position then is that the Legislature is the sole authority which can decide whether what it does is *intra vires* or not. It is constituted by enactment and the sole judge in its own cause.

In legislating, it must be presumed to have interpreted the Constitution as permitting that legislation.

It may be that there are portions of the Constitution which are more suitable for interpretation by a non-juristic body but I doubt whether the question of legislation being *ultra vires* is one of them.

So far as the present case is concerned the constitution cannot be said to be a constitution which imposes any real restrictions on the legislature.

If the Legislature enacts that a magistrate can be instructed by a Minister regarding any particular matter before his Court, then the legislation must be taken as either having repealed Article 2 of the Supplement of 1908 or, what amounts to the same thing, having interpreted that clause as not forbidding such legislation.

One may doubt whether this was the real intention of the framers of either of Article LXIV or of the Supplement of 1939 but a Court cannot presume that any legislation clearly expressed was passed *per incuriam*.

It follows that no legislation which the Legislature of the State of Johore chooses to pass is or can be held by a Court of law to be *ultra vires* the Constitution of Johore.

It would therefore be futile to pursue Dato Braddell's most interesting exposition of the original law of Johore because a Court cannot say that that original law is referred to in the Constitution without interpreting the Constitution.

The impugned legislation must be regarded as valid.

There was evidence to support the conviction of the woman and the first appeal is dismissed. In the case of the second appeal the majority of the Court thinks that there was no evidence that the man knew the woman to be married and his appeal is allowed.

**Poyser, C.J.**—The appellants were convicted of adultery an offence punishable under Enactment No. 47 of 1937 (The Offences by Muhammadans Enact-

ment). They were each sentenced to a short term of imprisonment.

Mr. Coltart, who appeared for the appellants, stated that the evidence was sufficient to justify the conviction, and the Magistrate had in no way misdirected himself, but the appeals were instituted at the instance of the Johore Law Officers, who had doubts, whether the above Enactment and also other Johore Enactments, were valid or *ultra vires* on the ground that they infringed the constitution. He further stated that he was instructed by the State, and that the appellants, who had served their sentences, had no interest in these appeals and would not be affected by whatever decision the Court gave.

The main grounds of appeal are set out in the amendment to the petition of appeal which was by consent filed. Those grounds are as follows:—

(a) Mohammadan Law is one of the branches or ingredients of the Law of the State of Johore.

(b) Section XLIX of the Constitution of the State of Johore reads as follows:—

"The duties of.....
.....foreign States."

(c) The Offences by Mohammedans Enactment purports to have been made by the Council of State with the approval of His Highness The Sultan and purports to revise, enlarge or amend the Mohammedan Law contrary to section XLIX of the said Constitution.

(d) The Offences by Mohammedans Enactment is **Ultra Vires** the said Constitution and is therefore void and of no effect.

(e) The Magistrate accordingly acted without jurisdiction in trying the case.

In the course of the argument we were given a most interesting outline of the history of Johore and its constitution. The State of Johore, as the English Courts have recognised, is an independent State and the relations between the Sultan and His Majesty are relations of alliance regulated by treaty and not relations of dependency. Prior to 1895 there was no written law, only proclamations, customary and unwritten law, and the Sultan's power was absolute.

On the 14th of April 1895 Sultan Abu Bakar abrogated his absolute sovereignty, and granted the inhabitants of his State the constitution, the effect of which we are now called on to decide. The constitution provided for, *inter alia,* the following:—

> The Royal Succession; a Council of Ministers, a body, with somewhat similar duties to those of His Majesty's Privy Council; a Council of State which is principally a legislative body; and in regard to religion declared that the 'Religion of the State' is the Mohammedan religion.

The concluding Article LXIV provided for the interpretation of and amendments to the constitution; of the latter there have been a number, the most important so far as these proceedings are concerned being the amendment of the 18th of July of this year, the material part of which is a follows:—

> "WHEREAS doubts have arisen as to the true construction of the following words to wit—
>
> 'Furthermore We and Our Successors by.....
> .....called in question.'
>
> contained in section LXIV of.....
> .....or any other section thereof."

The constitution of Johore is not, therefore, a rigid constitution. It is in the nature of an Enactment which can at any time be amended or varied, and therefore has the force of law. In view of its terms I have no hesitation in coming to the conclusion that this Court has no power to pronounce on the validity or invalidity of any Enactment passed by the Council of State and assented to by the Sultan, any more than the English Courts could pronounce an Act of Parliament to be invalid. To hold otherwise would be to ignore the sovereignty of the Sultan and the legislature and to treat Enactments of the Johore Legislature as the English Courts treat by-laws.

Further, if there were any doubts as to the competence of the Sultan and State Council to interpret the constitution, such doubts have been removed by the July amendment of this year which lays down, in the clearest possible terms, that only the Sultan with the concurrence of the Council of State can determine the interpretation and meaning of Article XLIX of the Constitution.

It follows, therefore, that even if Enactment No. 47 of 1937 is contrary to the provisions of the constitution, this Court cannot hold it to be so. I would only add that the Mohammedan Law was never adopted, in its entirety, in the State of Johore. Mr. Braddell referred us to the early customary Laws which establish this proposition. Such laws are set out in the Translation of the Malayan Laws of the Principality of Johore, prepared by the late Thomas Braddell in 1855 and published in volume IX of the Journal of the Indian Archipelago.

The following is an example:—

> "If a person who receives a blow on the face kill the assailant it shall be deemed no offence should he kill him within three days, but if after this period, the slayer shall be fined one catty, for by so doing he has conducted himself in an unmanly manner and this is the law of custom. But by the law of God the slayer in this case shall be put to death."

In recent years too, the majority of Enactments probably contain provisions which are not in accordance with Mohammedan Law. Enactment No. 47 of 1937 is one of such Enactments, for under Mohammedan Law the penalty for adultery is death, but under the Johore law only imprisonment and fine.

I would dismiss the appeals.

**Gordon-Smith, Ag. J.A.**—In these two cases the Appellants had respectively been convicted under sections 4 and 6 of the Offences by Muhammedans Enactment, No. 47, by reason of having had illicit intercourse with each other.

In both cases, the grounds of appeal were identical and the two appeals were heard together. Counsel for the Appellants did not attempt to controvert the facts and agreed that if he did not succeed on the grounds of appeal as filed, then each accused had been properly convicted.

Those grounds of appeal were as follows:—

(See McElwaine, C.J's. Judgment).

It will be seen, therefore, that these grounds of appeal put in issue the Constitution of the State of Johore and the powers thereunder, including the power to prescribe by law rules of conduct by Muhammedans and others.

It would be unprofitable in this Judgment to attempt to go into the past history of the State of Johore and the prior sovereignty of its Rulers and it is sufficient to state that according to an agreement or Treaty between the Government of the United Kingdom and Sultan Abu Bakar dated the 11th Dec. 1885 the United Kingdom clearly recognized Johore as being an Independent State. There had been previous Treaties and there were subsequent Treaties which defined the respective relations of the two Governments and which, *inter alia,* provided for mutual assistance and co-operation and limited the dealings of the State with foreign powers.

On the 14th April 1895, the then Sultan, His Highness Abu Bakar, granted a written Constitution to the State.

It is desirable to set this out, *verbatim,* in certain respects. The Preambles read as follows:—

(See McElwaine, C.J's. Judgment).

Subsequently, the Constitution was amended at various times, namely in 1908 by adding an Article that—

> "No person can be deprived.....
> .....of all good Government."

Further Articles amplify the spirit of this first Article. It might be noted that this first "Supplement" (as additions or amendments to the Constitution are described), was by the present Sultan Ibrahim who is described in the Preamble as "Sovereign Ruler and Possessor of this State of Johore and its Dependencies", and this Supplement was with the concurrence and assent of all Members of the Council of State.

By a further Supplement in 1912, an Executive Council was constituted and in 1914, an increase in the number of Councillors of State was provided for. In 1918, a further Supplement was issued to remove certain doubts as to the construction of Article XXVI. From then until recently there have been no further additions or amendments but on the 18th July last, a Supplement was issued which is relevant to these proceedings and reads as follows:—

> "WHEREAS doubts have arisen as to the true construction of the following words to wit—
>
> Furthermore We and Our Successors.....
> .....never be called in question.'
>
> contained in Section LXIV of Our Constitution of the State of Johore.....
> .....any other section thereof."

Having now set out what appear to be more important parts of this written Constitution, it is now possible to consider the points brought forward in argument in relation to relevant articles of the Constitution. Mr. Coltart, for the Appellants, submitted as a preliminary point the question as to whether the interpretation of the Constitution arose and whether the Court was competent so to interpret it. If there was no question as to this, then the point would be whether the Offences by Muhammadans Enactment No. 47 of 1937 varied or enlarged the Muhammadan Law.

For the Respondent, i.e. the State, it was submitted by Mr. Roland Braddell—

(a) That the Court had no power to pronounce on the validity of an Enactment.

(b) That the Court had no power to interpret the Constitution, but to apply it.

(c) That, in fact, the Offences by Muhammadens Enactment did not in any way infringe the Constitution.

As a starting point, it must, I think, be conceded that prior to 1895, the Sultan, (or Maharajah as he was previously called) was an absolute Monarch and whatever Council of Elders, Ministers, or Chiefs there may have been, such acted in an advisory capacity only and that full sovereign power rested and remained in the Sovereign. The earlier Treaties with the United Kingdom fully support this view, as does the Privy Council Judgment in the *Pahang Consolidated Co., Ltd. v. the State of Pahang*[3].

Then in 1895 a progressive and enlightened Ruler granted a written Constitution to the State whereby and under which he voluntarily became a Constitutional Ruler in terms of that written Constitution. It is desirable to comment briefly on this remarkable document. It deals comprehensively with the Succession and the Royal House and provides that the Ruler shall be of the Mohammedan Faith. It provides for a Council of Ministers and prescribes their duties, comparable to His Majesty's Privy Council. It provides for a Council of State which is mainly a legislative body, the principal duties thereof being set out in Article XLIX. In 1912, an Executive Council was added comparable to the Cabinet in England and the Executive Council ordinarily to be found existent in Colonies. It declares that the State Religion is the Mohammedan Religion but at the same time tolerates other religious beliefs, and the concluding Article LXIV provides for amendments and additions to the Constitution and its interpretation. It is desirable to set out this Article as it is relevant, and reads as follows:—

"LXIV. At the end of this Law.....
.....and never be called in question."

As regards the Council of State and its legislative functions, the sanction and approval of the Ruler is required before any legislation can come into operation and it is interesting to note that provision is even made (vide Article LV) in case the Ruler feels himself unable to approve or sanction any enactment or other matter. In such case, if the enactment or matter is brought up again and is approved by the Council at three successive meetings, then on the fourth occasion "it shall be expedient on the part of the Sovereign to approve and sanction the same, because the moral responsibility of the Sovereign then entirely ceases".

It is, I think, quite clear that this Constitution of 1895, with its subsequent Supplements, has the force of law. It is part of the law of the State and is binding on the Sultan and the State and the Sultan himself is subject thereto (vide *Wong Ah Fook v. State of Johore,* 1916[1]). It is clear also that the Constitution can be amended or added to by the means provided therefor in the Constitution itself. It would appear, therefore, that the Constitution was framed not only to regulate and set on record certain essential matters of State, but also to relieve, to some extent, the Ruler of the increasingly heavy burden of onerous governmental duties and responsibilities by creating and establishing a Council of State and a body of Ministers who would, in proper and regular form, act as the Ruler's advisers and take a share in such duties and responsibilities.

It would be inappropriate in this Judgment to consider or discuss the rights, duties an responsibilities which might be contained in this written Constitution.

Reverting, however, to the submissions before us, I think that it is quite clear that it is not competent for any Court in the State to hold that any Enactment duly passed by the Council of State and assented to by the Ruler is *ultra vires* the Constitution and therefore void.

Neither, particularly in view of the Supplement of the 18th July 1939, is it competent for this or any other Court, to interpret or construe the meaning or intent of any particular article or part of the Constitution. This Supplement has removed an alleged ambiguity in one respect and clearly provides that the purport, meaning, intent of or construction to be placed upon any article or part of the Constitution is reserved to His Highness and the Council of State. It is unnecessary to speculate whether or not this Court would have come to the same conclusion, apart from such Supplement.

It follows, therefore, that it is not competent for this Court to say that the Enactment No. 47 is either *ultra vires* or invalid and it is for His Highness and the Council of State to say to what extent Mohammadan Law is one of the branches or ingredients of the law of the State of Johore. It might, however, be observed that there are many of the local enactments which abrogate or appear to abrogate the strict letter of Mohammedan Law and in regard to the offence of adultery known as Zinnah, the penalty under Mohammedan Law is death by stoning, whereas under the Offences by Muhammadans Enactment No. 47, sections 4 and 6 respectively, the maximum punishment is three months simple imprisonment, and 12 months imprisonment of either description and a fine of $250.

It follows, therefore, that, in my opinion, the grounds of appeal fail and both appeals must be dismissed.

In conclusion, I would add that I am by no means assenting to the proposition (if such should be made) that it is not competent for Courts to interpret and construe Enactments duly passed by the Council of State and approved by His Highness. That is one of the duties of the Courts here and elsewhere, but the conferring of jurisdiction upon Courts to declare Enactments (which, in effect, are tantamount to Acts of Parliament) to be null and void owing to their being *ultra vires* the Constitution is quite another matter.

**Pedlow, J.**—I have had the advantage of reading in advance the judgment of the learned President of the Court and with his conclusion I agree.

These two appeals were based on the ground that the convictions were under an enactment (Enactment No. 47) Muhammadans' Offences) which was alleged to be *ultra vires* the Constitution of the State of Johore and therefore void, and that the convictions were accordingly wrong in law. I am satisfied that, under the Constitution (with Supplements) and the Laws of the State of Johore, the Courts have no power to interpret the Constitution or to declare that any law duly passed by the Johore Legislature is *ultra vires* that Legislature. In fact the Courts can only assume that all laws duly passed are *intra vires*.

The appeals must, therefore, fail so far as the grounds of appeal argued before the Court are concerned. But a perusal of the record in Appeal No. 2 shows that there was no evidence that the man knew the woman to be married and the man's appeal is, therefore, allowed. The woman's appeal is dismissed.

**Manning, J.**—I agree with the opinion which has been pronounced by my lord, the Presiding Judge, on the main argument of this appeal, and I adopt his reasoning.

I also agree with him that in the case of the second appeal there was no evidence to justify the conviction. This was not put forward as a ground of appeal, but I think it is the duty of this Court to say that there was no evidence and to give effect to its pronouncement.

In my opinion the first appeal that of Anchom binte Lampong, should be dismissed, and the second appeal, that of Hussin bin Mandot, should be allowed.

*Order accordingly.*